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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,716	11/15/2005	Thomas Sagel	SAGEL4	6838
1444 7590 06/10/2010 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER				
ING, MATTHEW W				
ART UNIT		PAPER NUMBER		
3637				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,716

Applicant(s)

SAGEL ET AL.

Examiner

MATTHEW W. ING

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2010.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-30 is/are pending in the application.
4a) Of the above claim(s) 19-30 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 15-17 is/are rejected.
7) ☒ Claim(s) 18 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fulterer (6,199,966) in view of Cirocco (5,951,132).
3. Fulterer teach(es) the structure substantially as claimed, including a rigid frame having an upper segment (Fig. 9) and a lower segment (16); an upper rail (28) and a lower rail (4); wherein a furniture front (Fig. 9) is fixed on the rigid frame; wherein the upper segment (Fig. 9) of the rigid frame is engaged to the upper rail (28) and the lower segment (16) of the rigid frame is engaged (via, e.g., 32) on the lower rail (4); wherein the rigid frame is adjustable vertically between the upper rail (28) and the lower rail (4) by a height adjustment screw (15) engaged between the lower frame segment (16) and the lower rail (4); and a locking means (combination of 33 & 37).
4. The only difference between Fulterer and the invention as claimed is that Fulterer fail(s) to teach two height adjustment screws spaced from each other horizontally along the length of the lower rail; and a spring biased locking latch slidably engaged against the screws in the lower frame segment when in the locked condition for locking the rigid frame between the upper rail and the lower rail.
5. Cirocco, however, teaches a spring biased locking latch (122) slidably engaged against a protrusion (132) in an adjacent frame segment (30) when in the locked condition. Additionally,

regarding the quantity of height adjustment screws, mere duplication of the essential working parts of a device has been held to involve only routine skill in the art.

6. It would have been obvious to one of ordinary skill in the art to include a second height adjustment screw in order to provide additional structural support; and to add a latch, as taught by Cirocco, to the structure of Fulterer, in order to permit retention of the frame thereof when not in use, thereby providing the structure substantially as claimed.

7. Regarding claim 16, Fulterer teaches a height adjustment screw (15) screwed (col. 6, lines 52-54) into the lower rail and each have a head (upper portion of 15) which extends through bottom and top sides of the lower rail and a support surface (34) of the two height adjustment screws engages under the bottom side of the lower rail. It is noted that the support surface (upper surface of 34) engages Item 31; and that such engagement occurs "under the bottom side of the lower rail". Alternately, it is noted that the upper surface of 31 can be termed a "support surface" and that said support surface engages the remainder of Item 15 "under the bottom side of the lower rail". Additionally, Cirocco teaches a spring biased locking latch engaging a recess between a head and a bottom side of an elongated structure when in the locked condition.

8. Regarding claim 17, Fulterer teaches a head (upper portion of 15) that can be turned (via 31) in (i.e., via threaded connection (col. 6, lines 52-54) and between the walls (8, 9) of said lower rail) the lower rail to vertically adjust the frame between the upper rail and the lower rail (col. 7, lines 53-56).

Allowable Subject Matter

9. Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 5/4/10 have been fully considered but they are not persuasive.

11. In response to applicant's arguments that the combination of Fulterer & Cirocco would yield an inoperable structure, it is noted that inclusion of a second adjustment screw would not necessarily interfere with the first adjustment screw thereof. Such a second screw could be adjusted so that its head was at a different height than that of the first screw; and adjustment of said second screw would not be prevented by the first screw if the latter were adjusted prior to adjustment of the former. Applicant's arguments are therefore found unpersuasive.

12. In response to applicant's arguments regarding claim 16, whereas the latch of Cirocco engages the protrusion thereof at a location below a top portion thereof (see Fig. 12), it would appear that modifying Fulterer in view of Cirocco would likewise yield a structure having a latch engaging the adjustment screws thereof at a point below the top portions (i.e., 32-33) of said screws. Applicant's arguments are therefore found unpersuasive.

13. In response to applicant's arguments regarding Oogami & Bowers, it is noted that these references were cited not in order to provide motivation for combining Cirocco & Fulterer, but rather to illustrate that the inclusion of a second adjustment screw between slidable structures is well known in the art. It is noted that applicant does not dispute this finding.

14. In response to applicant's arguments regarding the inclusion of a second screw, it is noted that mere duplication of the essential working parts of a device has been held to involve only routine skill in the art; that the inclusion of a second adjustment screw between slidable structures is well known in the art (see, e.g., Oogami (4,142,272) and Bowers (5,379,487)); and that adequate motivation to perform such a modification can be found in the desire to provide additional structural support to another portion of the upper rail. As such, applicant's arguments to the contrary are not found persuasive.

15. The Declaration under 37 CFR 1.132 filed 5/4/10 is insufficient to overcome the rejection of claims 15-17 based upon Fulterer (6,199,966) in view of Cirocco (5,951,132) as set forth in the last Office action because

- It include(s) statements which amount to an affirmation that the affiant has never seen the claimed subject matter before. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.
- It include(s) statements which amount to an affirmation that the claimed subject matter functions as it was intended to function. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.
- It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.
- It fails to specify the rejection(s) said declaration is intended to address.
- It appears to be directed towards matters of opinion rather than showings of objective evidence. See, e.g., p. 3 of the declaration, wherein the affiant addresses the legal, not

factual, question of obviousness, by asserting that the structure disclosed in the instant application is "new and...not obvious for a professional in this field."

16. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW W. ING whose telephone number is (571)272-6536. The examiner can normally be reached on Monday through Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell M. Jayne can be reached on (571) 272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Janet M. Wilkens/
Primary Examiner, Art Unit 3637

MWI
6/4/10